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STATE OF TEXAS
Plaintiff,

V.

SENIOR RX SUPPORT, INC.
Defendant

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND
PERMANENT INJUNCTIONS AND CIVIL DAMAGES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the STATE OF TEXAS, Plaintiff, acting by and through Attorney General of Texas GREG ABBOTT (referred to herein as the "Attorney General"), on behalf of the State of Texas and on behalf of the interest of the general public of the State of Texas, and complains of SENIOR RX SUPPORT, INC. The Attorney General would respectfully show the Court as follows:

I. DISCOVERY

1. Discovery shall be conducted under LEVEL 2 of Rule 190.3, of the Texas Rules of Civil Procedure.

II. JURISDICTION

2. This action is brought pursuant to the statutory authority of TEX. BUS. & COM. CODE ANN. §17.47(a), permitting the Consumer Protection Division of the Attorney General's office to bring an action to restrain, by temporary restraining order, temporary injunction, or permanent injunction, the use of any method, act or practice declared to be unlawful by TEX. BUS. & COM. CODE ANN. §17.46, where such proceedings are in the public interest. The Attorney General files this suit against Defendant on the grounds that Defendant has engaged in false, misleading and deceptive acts

and practices in the course of trade and commerce as defined herein and as declared unlawful pursuant to the Texas Deceptive Trade Practices--Consumer Protection Act, TEX. BUS. & COM. CODE § 17.41 et seq.

3. This suit is brought against Defendant for injunctive relief, actual damages, restitution, civil fines and penalties, costs, and attorney's fees as a result of the violations of the DTPA.

III. TRIAL BY JURY

15. Plaintiff, STATE OF TEXAS, demands trial by jury in this cause.

IV. DEFENDANT

4. SENIOR RX SUPPORT, INC., is a Texas corporation doing business in Texas and who may be served with process by serving its registered agent John C. Willems III at 10440 N. Central Expressway, Ste. 1400, Dallas, TX 75231 or at 660 Preston Forest Center # 133, Dallas, Texas 75230 or wherever he may be found.

V. VENUE

5. Venue is proper in Dallas County, Texas, pursuant to § 17.47(b) of the DTPA because Defendant resides there. TEX. BUS. & COM. CODE ANN. § 17.47(b). Venue is also proper in Dallas County, Texas, pursuant to § 15.002 (a)(1) of the TEX. CIV. PRAC. & REM. CODE, because Dallas County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

VI. PUBLIC INTEREST

6. Plaintiff STATE OF TEXAS has reason to believe that Defendant is engaging in, has engaged in, and will continue to engage in the unlawful practices set forth below. In addition,

Plaintiff STATE OF TEXAS has reason to believe Defendant has caused and will cause immediate, irreparable injury, loss and damage to the State of Texas, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

VII. TRADE AND COMMERCE

7. Defendant has, at all times described below, engaged in conduct constituting “trade” and “commerce,” as those terms are defined in §17.45(6) of the DTPA.

VIII. ACTS OF AGENTS

8. Whenever in this petition it is alleged that a Defendant did any act, it is meant that:

A. The Defendant performed or participated in the act, or

B. The Defendant’s officers, agents, trustees or employees performed or participated in the act on behalf of and under the authority of the Defendant.

VIX. NOTICE BEFORE SUIT

8.1 Pursuant to DTPA §17.47(a), the Consumer Protection and Public Health Division informed Defendant in general of the alleged unlawful conduct described below, at least seven days before filing suit.

X. STATEMENT OF FACTS

10.1 Defendant, SENIOR RX SUPPORT, INC., is engaged in the sale of a prescription drug mail-order service. Prescription drug companies have programs for low-income senior citizens where the companies provide free or reduced-cost prescription drugs to senior citizens below a certain income

level. Each drug company has its own separate program with differing levels of total income required for qualification, as well as differing application processes. Defendant offers to simplify the process for consumers by gathering the paperwork and submitting it to the drug companies on the consumer's behalf. For this service, Defendant charges a fee.

10.2 Beginning in 2002, Defendant began to advertise its prescription drug service to senior citizens both through a website and by giving an advertisement/application flyer to insurance agents to hand out to their prospective senior citizen clients. The flyer advertises: "We can help if: You can not afford the cost of prescription drugs or if your income is from Social Security, welfare or disability or if you are classified low to middle income." Both the website and the flyer state that medication "will be available" for senior citizens who meet the following qualifications: (1) They do not have prescription drug insurance; (2) The amount of the applicants' Social Security income creates a hardship when purchasing medication; and (3) They do not qualify for another third party or government prescription drug program.

10.3 Nowhere on either the website or the flyer does Defendant state that each prescription drug company has its own total income levels that the applicant must meet to qualify, and that few or none of those income requirements are contingent upon whether the applicant receives Social Security.

10.4 Defendant charges a \$20 enrollment fee and a service fee of \$60 per prescription per year for the service. The consumers must pay the fees before they receive the application paperwork to enroll in the drug companies' programs.

10.5 After the application fees are received, Defendant then forwards the necessary paperwork and instructs the consumer to report only social security income to the drug companies, even if that

information is false. In effect, Defendant directs consumers to report fraudulent information to the drug companies.

10.6 When the consumer asks for a refund of their initial fees after realizing that he or she must commit fraud to participate in Defendant's service, Defendant refuses to refund more than 75% of the service fee.

10.7 Senior citizens bear the brunt of this unconscionable business practice.

XI. VIOLATIONS OF THE DTPA

11. Defendant, in the course and conduct of trade and commerce, has directly and indirectly engaged in false, misleading and deceptive acts and practices declared to be unlawful by the DTPA, to wit:

- A. Engaging in false, misleading or deceptive acts or practices in the course of trade or commerce, in violation of DTPA § 17.46(a), by telling consumers that they need only receive social security income to qualify for the free drug program;
- B. Representing that services are of a particular standard, quality, or grade when they are of another, in violation of DTPA § 17.46(b)(7), by representing that their prescription drug service would obtain free drugs for all senior citizens who receive social security;
- C. Advertising services with the intent not to sell them as advertised, in violation of DTPA § 17.46(b)(9), by advertising through flyers and the internet that all senior citizens who receive social security income will qualify for free prescription drugs;
- D. Making false or misleading statements of fact concerning the reasons for, existence

of, or amount of price reductions, in violation of DTPA § 17.46(b)(11), by falsely stating that drug companies base free prescription drug programs on social security income alone;

E. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of DTPA § 17.46(b)(12), by representing that senior citizen consumers should fraudulently report their income to prescription drug companies;

F. Failing to disclose material information intending to induce a consumer into a transaction to which they would not have entered had the information been disclosed, in violation of 17.46(b)(24), as most consumers would not have enrolled in Defendant's service and paid the service fee had they known that they would have to fraudulently report their income to receive the prescription drugs.

11.1. Defendant has, by means of the unlawful acts and practices described in this petition, obtained money or other property from identifiable persons to whom such money or property should be restored.

XII. DISGORGEMENT

12. Defendant's assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendant to retain, including all ill-gotten gains and benefits or profits that result from Defendant's conduct. Defendant should be ordered to disgorge all monies fraudulently taken from individuals and businesses together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the

benefit of victimized consumers and the State of Texas.

XIII. APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

13. Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated and will continue to violate the law as alleged in this Petition. Unless immediately restrained by this Honorable court, Defendant will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public. Therefore Plaintiff requests a Temporary Injunction and Permanent Injunction as indicated below.

XIV. PRAYER

14. WHEREFORE, Plaintiff prays that Defendant be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, Defendant's successors, assigns, officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendant, from engaging in the following acts or practices:

A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to the business of Defendant currently or hereafter in Defendant's' possession, custody or control except in response to further orders or subpoenas in this cause;

B. Transferring, spending, hypothecating, concealing, encumbering, depleting, modifying, dissipating, distributing, or removing from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust

agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in possession of, or claimed by Defendant, insofar as such property relates to, arises out of or is derived from the unlawful business operation of Defendant within the State of Texas;

C. Selling, marketing, or advertising a prescription drug service that purports to obtain free or reduced-cost drugs without explaining the true requirements, with specificity, of the drug companies for such programs;

D. Representing to consumers that receipt of social security income alone will qualify them for all free prescription drug programs of drug companies;

E. Representing to any consumer in certain or guaranteed terms that said consumer will obtain free prescription drugs by using Defendant's program;

F. Failing to disclose to consumers that Defendant offers a service that consumers could perform on their own;

G. Submitting or encouraging others to submit false information of any kind, including false reporting of income, to a drug company or government agency;

H. Failing to refund consumers' enrollment and service fees when it is determined that the consumer does not qualify to receive their prescription drugs through the various drug companies' prescription drug services.

14.1. In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court will:

A. Adjudge against Defendant civil penalties in favor of Plaintiff, STATE OF TEXAS, in an amount up to \$20,000 per violation, allowed by law under the DTPA, specifically, § 17.47(c)(1) of the Texas Business and Commerce Code;

B. Enhance the civil penalties by adjudging against Defendant civil penalties in favor of Plaintiff STATE OF TEXAS in an amount up to \$250,000 as allowed by law under the DTPA, specifically, §17.47(c)(2) of the Texas Business and Commerce Code, due to Defendant committing acts and practices which were calculated to acquire or deprive money or other property from consumers who were 65 years of age or older when the act or practice occurred;

C. Order Defendant to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or, in the alternative, award judgment for damages in an amount within the jurisdictional limits of this court to compensate for such losses;

D. Order equitable rescission of contracts between Defendant and consumers whereby such consumers receive most or all of the money back that they paid to Defendant;

E. Order Defendant to pay Plaintiff STATE OF TEXAS attorney fees and costs of court pursuant to TEX. GOV'T. CODE §402.006(c);

F. Order the disgorgement of all sums taken from consumers by means of deceptive trade practices, together with all proceeds, interest, income, profits and accessions thereto;

G. Grant leave to the Plaintiff to conduct telephonic, oral and other depositions prior to the Defendant's answer date and any Temporary Injunction hearing; and

H. Grant all other relief to which the Plaintiff State of Texas may show itself entitled.

Respectfully submitted,

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